

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA

Christopher Lee Johnson,	)	C/A No. 6:17-2149-MGL-JDA
	)	
Plaintiff,	)	
	)	
vs.	)	<b>REPORT AND RECOMMENDATION</b>
	)	
Apple, Inc.,	)	
Tim Cook,	)	
	)	
Defendants.	)	
_____	)	

Christopher Lee Johnson ("Plaintiff"), proceeding pro se, brings this civil action apparently seeking damages for alleged violations of his constitutional rights. Plaintiff is a non-prisoner, and he files this action *in forma pauperis* under 28 U.S.C. § 1915. The Complaint is subject to summary dismissal.

**BACKGROUND**

Plaintiff appears to reside in Greer, South Carolina, and he brings suit against Apple, Inc., and Tim Cook, the "CEO", who reside in Cupertino, California. [Doc. 1.] Although the Complaint is difficult to decipher, Plaintiff seems to allege the following facts. Apple, Inc., is responsible for investing their "doctrine and branding there (sic) religious fraud of immigration and involuntary servitude and participating in foreign policy." [*Id.*] Plaintiff has been used by the federal government for diplomacy related to Israel, religion, land or property and voter fraud. [*Id.*] Plaintiff has been through health market place pressure and has been branded as a "market model." [*Id.*]

Plaintiff alleges federal question jurisdiction based on 13th Amendment involuntary servitude, diplomacy, rule of law, agendas of immigration and employment, monopoly,

eminent domain, and federal programs. [*Id.*] Based on these facts, Plaintiff seems to seek damages. [*Id.*]

### **STANDARD OF REVIEW**

Pursuant to the provisions of 28 U.S.C. §636(b)(1)(B), and Local Civil Rule 73.02(B)(2)(e) DSC, the undersigned is authorized to review the Complaint for relief and submit findings and recommendations to the District Court. Plaintiff filed this action pursuant to 28 U.S.C. § 1915, the *in forma pauperis* statute. This statute authorizes the District Court to dismiss a case if it is satisfied that the action “fails to state a claim on which relief may be granted,” is “frivolous or malicious,” or “seeks monetary relief against a defendant who is immune from such relief.” 28 U.S.C. § 1915(e)(2)(B).

As a pro se litigant, Plaintiff’s pleadings are accorded liberal construction and held to a less stringent standard than formal pleadings drafted by attorneys. See *Erickson v. Pardus*, 551 U.S. 89, 94 (2007) (*per curiam*). However, even under this less stringent standard, the pro se pleading remains subject to summary dismissal. The mandated liberal construction afforded to pro se pleadings means that if the court can reasonably read the pleadings to state a valid claim on which Plaintiff could prevail, it should do so, but a district court may not rewrite a petition to include claims that were never presented, *Barnett v. Hargett*, 174 F.3d 1128, 1133 (10th Cir. 1999), or construct Plaintiff’s legal arguments for him, *Small v. Endicott*, 998 F.2d 411, 417-18 (7th Cir. 1993), or “conjure up questions never squarely presented” to the court, *Beaudett v. City of Hampton*, 775 F.2d 1274, 1278 (4th Cir. 1985). The requirement of liberal construction does not mean that the court can ignore a clear failure in the pleading to allege facts which set forth a claim cognizable in a federal district court. See *Weller v. Dep’t of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990).

## **DISCUSSION**

This Complaint appears to be filed pursuant to 42 U.S.C. § 1983, which "is not itself a source of substantive rights,' but merely provides 'a method for vindicating federal rights elsewhere conferred.'" *Albright v. Oliver*, 510 U.S. 266, 271 (1994) (quoting *Baker v. McCollan*, 443 U.S. 137, 144 n.3 (1979)). A civil action under § 1983 "creates a private right of action to vindicate violations of 'rights, privileges, or immunities secured by the Constitution and laws' of the United States." *Rehberg v. Paulk*, 132 S. Ct. 1497, 1501 (2012). To state a claim under § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

Although the Court must liberally construe the pro se Complaint and Plaintiff is not required to plead facts sufficient to prove his case as an evidentiary matter in the Complaint, the Complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007)); see also *Francis v. Giacomelli*, 588 F.3d 186, 193 (4th Cir. 2009) (explaining that a plaintiff may proceed into the litigation process only when his complaint is justified by both law and fact); cf. *Skinner v. Switzer*, 131 S. Ct. 1289 (2011) (holding that plaintiff need not pin his claim for relief to precise legal theory).

As noted above, § 1983 "provides a cause of action against any person who deprives an individual of federally guaranteed rights 'under color' of state law." *Filarsky v. Delia*, 132 S. Ct. 1657, 1661 (2012). "Anyone whose conduct is 'fairly attributable to the

state' can be sued as a state actor under § 1983.” *Id.* The allegations against Apple, Inc., and Tim Cook seem to allege that they are a private corporation and the individual CEO of the corporation, and there are no allegations that Apple, Inc., or Tim Cook acted in any way attributable to a state. With few exceptions, purely private conduct, no matter how wrongful, is not actionable under 42 U.S.C. § 1983 and the United States Constitution. See *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936 (1983); *Mentavlos v. Anderson*, 249 F.3d 301, 310 (4th Cir. 2001). Therefore, Plaintiff’s alleged violations of his constitutional rights should be dismissed against Defendants because they are not alleged to be state actors. And, thus, Plaintiff fails to allege a plausible § 1983 claim.

Further, Plaintiff does not sufficiently allege any violation of a federal law or a violation of state law pursuant to diversity jurisdiction. Upon review, the allegations are insufficient to establish subject matter jurisdiction or allege a plausible claim that should be served. See *Neitzke v. Williams*, 490 U.S. 319, 327 n.6 (1989) (a patently insubstantial complaint such as absolutely devoid of merit may be dismissed for lack of subject matter jurisdiction).

Additionally, Plaintiff’s entire Complaint may be dismissed because it is factually frivolous. Plaintiff’s factual allegations seem fantastic, fanciful, and delusional. See *Feurtado v. McNair*, C/A No. 3:05-1933-SB, 2006 WL 1663792 (D.S.C. June 15, 2006) (noting that frivolousness encompasses inarguable legal conclusions and fanciful factual allegations), *aff’d*, 227 F. App’x 303 (4th Cir. May 15, 2007); *Brock v. Angelone*, 105 F.3d 952, 953–54 (4th Cir. 1997) (finding that prisoner’s claim that he was being poisoned or experimented upon via an ingredient in pancake syrup served at his prison was fanciful or delusional, and the appeal was dismissed as frivolous with sanctions); *cf. Sloan v. City of*

*Asheville Police*, No. 91-6330, 1992 WL 212141 (4th Cir. 1992) (finding that allegations by a homeless person that he was harassed by police is not inherently fantastic or delusional). Therefore, this Court also may dismiss this action based on frivolousness. See *Worley v. Keller*, 475 F. App'x 484 (4th Cir. 2012) (a suit is frivolous if it lacks an arguable basis in law or fact); *Nagy v. FMC Butner*, 376 F.3d 252, 256–57 (4th Cir. 2004) (explaining that “[t]he word ‘frivolous’ is inherently elastic and ‘not susceptible to categorical definition.’”).

### **RECOMMENDATION**

Accordingly, it is recommended that the District Court dismiss this action without prejudice and without issuance and service of process. See *Neitzke v. Williams*, 490 U.S. 319, 324-25 (1989); *Haines v. Kerner*, 404 U.S. 519 (1972). **Plaintiff's attention is directed to the important notice on the next page.**

August 28, 2017  
Greenville, South Carolina

S/Jacquelyn D. Austin  
United States Magistrate Judge

## **Notice of Right to File Objections to Report and Recommendation**

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[I]n the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); see Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk  
United States District Court  
300 East Washington Street, Room 239  
Greenville, South Carolina 29601

**Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.** 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).